

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOHN DOE,
Plaintiff,

WILLIAM MARSH RICE UNIVERSITY,
Defendant.

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CIVIL ACTION 4:20-cv-02985

**DEFENDANT’S OBJECTIONS TO PLAINTIFF’S DESIGNATIONS OF
THE DEPOSITIONS OF EMILY GARZA AND DONALD OSTDIEK**

Defendant William Marsh Rice University (“Rice”) makes the following Objections to Plaintiff’s Designation of the Depositions of Emily Garza and Donald Ostdiek.

Rice objects to all designations from both depositions fall squarely within the definition of hearsay. *See* FED. R. EVID. 801(c) (“‘Hearsay’ means a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement”). “[H]earsay is not admissible...”. FED. R. EVID. 802.

The prior testimony exception to the hearsay rule is inapplicable. Plaintiff has subpoenaed both declarants’ attendance at trial. *See* FED. R. EVID. 804(a)(5), (b)(1) (testimony at earlier hearing or trial remains hearsay if proponent can procure

declarant's trial attendance). And the parties have not agreed to the use of depositions at trial even though the witness is available. *Cf.* Court Procedures and Practices C(6) ("The Court will accept the parties' agreement to use a deposition at trial even though the witness is available"). The transcripts are hearsay, and therefore inadmissible.

Plaintiff's designations should also be excluded *in toto* pursuant to Federal Rule of Evidence 403, which allows this Court to exclude evidence "if its probative value is substantially outweighed by a danger of... undue delay, wasting time, or needlessly presenting cumulative evidence." FED. R. EVID. 403.

Plaintiff has designated all but approximately eight lines of actual testimony by Ms. Garza out of her 206-page deposition transcript. He was twice as judicious in designating Dr. Ostdiek's deposition testimony, where he left 16 lines of testimony undesignated out of Dr. Ostdiek's 182-page transcript. Allowing Plaintiff to introduce both the deposition testimony he has designated and call the witnesses live to testify would also be tremendously time-consuming, duplicative, and wasteful. Plaintiff does not get to call each witness twice.

Rice additionally objects to specific designations on the following additional grounds.

Donald Ostdiek July 16, 2020 Deposition

Description Page:Line	Objections
4:2-23	Relevance.

Description Page:Line	Objections
36:13-36:24	Assumes facts.
38:11-19	Assumes facts.
42:8-12	Misleading, more prejudicial than probative.
45:10-15	Overbroad.
45:22-46:3	Assumes facts, misleading, more prejudicial than probative.
46:9-16	Overbroad, assumes facts.
47:3-9	Overbroad, assumes facts.
47:10-14	Overbroad, assumes facts.
47:15-48:2	Overbroad, assumes facts.
49:1-49:6	Overbroad, assumes facts; cumulative.
49:13-49:20	Assumes facts, misleading, more prejudicial than probative.
49:22-50:2	Assumes facts, misleading, misstated prior testimony, more prejudicial than probative.
50:4-50:10	Assumes facts, misleading, misstated prior testimony, more prejudicial than probative.
50:24-51:11	Assumes facts, misleading, misstated prior testimony, more prejudicial than probative.
51:13-18	Assumes facts, misleading, misstated prior testimony, more prejudicial than probative.
53:17-24	Relevance (question but no answer), misleading, assumes facts, misstates prior testimony, more prejudicial than probative.
54:1-15	Misleading, assumes facts; misstates prior testimony, more prejudicial than probative.
54:16-19	Relevance (question but no answer), misleading, assumes facts, misstates prior testimony, more prejudicial than probative.
57:1-4	Relevance (question but no answer).
57:6-57:8	Misleading, assumes facts, misstates prior testimony, more prejudicial than probative.
57:10-11	Misleading, assumes facts, misstates prior testimony, more prejudicial than probative.
57:12-13	Relevance (question but no answer).
57:15-57:17	Harassing, repetitious, cumulative, misleading, assumes facts, misstates prior testimony, more prejudicial than probative.
58:18-59:15	Harassing, repetitious, cumulative, misleading, assumes facts, misstates prior testimony, more prejudicial than probative.
59:17-59:23	Harassing, repetitious, cumulative, misleading, assumes facts, misstates prior testimony, more prejudicial than probative.

Description Page:Line	Objections
59:25-60:2	Harassing, repetitious, cumulative, misleading, assumes facts, misstates prior testimony, more prejudicial than probative.
64:14-15	Relevance.
66:13-18	Hearsay to the extent offered for the truth.
69:5-16	Assumes facts, misstates facts, misleading, more prejudicial than probative.
69:12-70:5	Hearsay to the extent questions and answers depend on or assume the truth of the prior statement being discussed.
70:20-71:2	Hearsay to the extent questions and answers depend on or assume the truth of the prior statement being discussed.
72:5-72:10	Assumes facts, misstates facts, misleading, more prejudicial than probative.
72:12-13	Assumes facts, misstates facts, misleading, more prejudicial than probative.
72:24-73:16	Assumes facts, misstates facts, misleading, more prejudicial than probative.
74:2-11	Assumes facts, misstates facts, misleading, more prejudicial than probative.
75:3-9	Assumes facts, misstates facts, misleading, more prejudicial than probative.
76:9-18	Assumes facts, misstates facts, misleading, confusing, more prejudicial than probative.
77:14-19	Relevance (unintelligible).
78:14-16, 23-25	Relevance (colloquy).
93:10-13	Relevance (question, no answer), calls for speculation.
96:1-5	Misstates facts, calls for speculation, more prejudicial than probative.
97:22-98:5	Misstates facts, more prejudicial than probative.
100:21-24	Misstates facts, calls for speculation, more prejudicial than probative.
102:23-103:12	Misstates facts, assumes facts, misleading, more prejudicial than probative.
109:17-22	Misstates facts, assumes facts, misleading, more prejudicial than probative.
111:10-19	Misstates facts, assumes facts, misleading, more prejudicial than probative.

Description Page:Line	Objections
112:3-9	Misstates facts, assumes facts, misleading, more prejudicial than probative.
120:16-21	Relevance, including predicate question (question with unchallenged instruction not to answer).
121:23-24	Relevance (question with unchallenged instruction not to answer).
123:12-14	Relevance (question without answer).
124:7-9	Relevance (question without answer).
124:15-19	Relevance (question without answer).
129:9-14	Calls for speculation.
130:18-22	Assumes facts, misstates facts, misleading, more prejudicial than probative.
131:7-18	Assumes facts, misstates facts, misleading, more prejudicial than probative.
136:18-22	Assumes facts.
146:25-147:9	Assumes facts, misstates facts, misleading, more prejudicial than probative.
150:2-11	Relevance, misleading, more prejudicial than probative.
151:15-20	Relevance, misleading, more prejudicial than probative.
154:13-20	Relevance, misleading, more prejudicial than probative.
157:18-158:5	Calls for speculation.
158:18-158:24	Calls for speculation, assumes facts, misstates facts, misleading, more prejudicial than probative.
163:11-15	Assumes facts, misstates facts, misleading, more prejudicial than probative.
169:4-12	Assumes misstates facts, misleading, more prejudicial than probative.
171:6-7	Relevance (question without answer).

Emily Garza July 1, 2020 Deposition

Description Page:Line	Objections
6:13-6:15	Relevance (question but no answer).
14:12-16	Misstates facts, misleading.
18:8-10	Relevance (answer with no question designated).

Description Page:Line	Objections
20:22-21:3	Relevance (question with no answer that was rephrased in response to objection).
21:4-10	Assumes facts, misleading.
21:11-15	Assumes facts, misleading, calls for legal conclusion.
24:15-25:10	Colloquy
31:7-12	Calls for medical opinion.
36:16-22	Relevance (question but no answer).
38:8-11	Assumes facts, misstates facts, misleading.
52:9-15	Assumes facts, misstates facts, misleading.
55:21-56:1	Assumes facts, misstates facts, misleading.
61:18-62:1	Colloquy
66:14-24	Assumes facts, misstates facts, misleading.
68:20-69:2	Assumes facts, misstates facts, misleading.
69:11-15	Assumes facts, misstates facts, misleading.
70:9-18	Assumes facts, misstates facts, misleading.
71:8-14	Relevance (question but no answer).
72:21-73:1	Calls for speculation.
76:11-15	Relevance (question but no answer).
81:22-82:1	Assumes facts, misstates facts, misleading, more prejudicial than probative.
82:8-11	Ambiguous.
82:25-83:5	Calls for a legal conclusion.
84:7-14	Calls for speculation, assumes facts, misstates facts, more prejudicial than probative.
87:11-16	Argumentative, ambiguous, misleading.
92:16-22	Misstates prior testimony, misleading, assumes facts.
93:23-94:2	Relevance (sidebar).
94:12-18	Relevance (question with no answer that was rephrased in response to request).
94:8-94:15	Relevance
99:6-9	Relevance (question with no answer).
100:20-25	Calls for speculation.
101:23-102:4	Assumes facts, misstates facts, misleading.
104:17-25	Assumes facts, misstates facts, misleading.
105:8-12	Calls for speculation.
106:6-10	Assumes facts, misstates facts.
106:18-23	Assumes facts, misstates facts.

Description Page:Line	Objections
107:3-8	Calls for speculation.
107:12-18	Misstates prior testimony.
108:11-13	Relevance (question with no answer).
110:16-112:22	Relevance (colloquy regarding identifying document).
114:8-14	Relevance (questions with no answers).
120:25-121:14	Assumes facts, misstates facts, misleading, more prejudicial than probative.
125:3-9	Assumes facts, misstates facts, misleading.
125:10-18	Multifarious, relevance (questions with no answers), assumes facts, misstates facts, misleading.
128:19-21	Argumentative.
133:20-21	Relevance (sidebar).
136:9-11	Calls for speculation.
138:14-19	Calls for speculation.
138:20-25	Calls for speculation.
139:17-24	Calls for speculation.
139:25-140:11	Argumentative, multifarious, relevance (question with no answer).
140:19	Relevance (question with no answer).
146:6-9	No substantive response before instruction not to answer.
146:13-15	Relevance (question with no answer), attorney-client privilege, work product.
147:18-19	Relevance (question with no answer).
156:21-157:1	Assumes facts, misstates facts, misleading, more prejudicial than probative.
165:21-166:2	Multifarious, relevance (questions with no answers)
171:18-172:3	Assumes facts, misstates facts, misleading, multifarious, relevance (question with no answer).
202:23-204:6	Relevance, more prejudicial than probative.

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/s/ Russell Hardin, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2025, I electronically filed a true and correct copy of Defendant William Marsh Rice University's Objections To The Deposition Designations of Emily Garza And Donald Ostdiek with the Clerk of the Court using the CM:ECF system, which will send notification of such filing to all registered parties.

/s/Terry Kernell
Terry Kernell